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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,525	02/23/2004	Kenyon A. Hapke	1508.061	1499
23598 7590 05/30/2008 BOYLE FREDRICKSON S.C. 840 North Plankinton Avenue MILWAUKEE, WI 53203				
EXAMINER RIGGLEMAN, JASON PAUL				
ART UNIT 1792		PAPER NUMBER		
NOTIFICATION DATE 05/30/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

### Office Action Summary

**Application No.**

10/784,525

**Applicant(s)**

HAPKE, KENYON A.

**Examiner**

JASON P. RIGGLEMAN

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 12-16, 18-21 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12-16, 19-21, 23-25 is/are rejected.
- 7) ☒ Claim(s) 10, 18, 26 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 2/14/2008 has been entered.

### ***Status of Claims***

2. Applicant's reply filed on 2/14/2008 is acknowledged. Current pending claims are 1-10, 12-16, 18-21, and 23-27. Claims 1, 12, 18, and 20 have been amended. Claims 26-27 are new. Claims 11, 17, and 22 are cancelled.

### ***Response to Arguments***

3. The applicant's arguments with respect to the rejection of claims 1-3, 6, 9, 12, 15, 19-20, and 23 under 35 U.S.C. 102(b) as being unpatentable by Buser et al. (US Patent No. 5881746) has been considered. The applicant argues that the Fig. 3 dual-direction arrows do not teach automatic closing. The applicant attempts to discount the teaching of arrows of Fig. 3 of Buser et al. by stating that the disclosure teaches away from this limitation and that it is not consistent with the limits of enablement. The applicant attempts to do this merely by stating the positive teachings of the specification of Buser et al.; however, this is not persuasive since it does not "explain away" the double arrows

of Fig. 3 which certainly teaches/suggests such an invention. To state that "the right-to-left arrow in this case indicates return motion of the closure bracket 33" is merely the *opinion* of the applicant. The rejection is maintained; however, the amendments have forced a new grounds of rejection for these claims (claim 12 argument; therefore, is moot). Also, the applicant has argued against the 103 (a) rejection of claims 5, 14, and 24-25 on the grounds that Burnett teaches a mercury switch which is actuated by an angle of the door and not a separation of latch components since such "a switch would not necessarily indicate whether the latch is engaged or not". Examiner asserts that one of ordinary skill in the art would find the teaching sufficient to make the combination. Further, the applicant's arguments are piecemeal and not commensurate in scope with claims. The applicant has argued against the 103 (a) rejection of claims 7 and 16; however, the applicant's arguments are piecemeal since the combination anticipates the claimed invention. The applicant's arguments against claim 24 are not persuasive since the controller logic and controller method are not given patentable weight since the claimed invention is an apparatus and not a method. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The rejection is maintained on these grounds.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 6-9, 12-13, 15-16, 19-21, and 23 are rejected under 35 U.S.C. 103

(a) as being unpatentable by Buser et al. (US Patent No. 5881746) in view of Ellingson et al. (US Patent No. 4510777).

6. Buser et al. teaches a dishwashing machine which has a electric actuator-operated latch that releasably locks the door in a closed position, Fig. 3 (note arrows). The latch is operated by a timer-controlled switching assembly of the machine, so as to release the door at the end of the rinsing cycle (Column 3, Lines 31-41). The drying cycle is effected through circulation of ambient air within the washing compartment through the partially-open door. The door pivots between a close position (drying position), visually covering the washing chamber, and seal position (washing position), in addition to an open position (loading position). The compression of the gasket (seal 31) in the seal position is inherent for water-tight dishwashing machines. Alternatively, the door pivots between a vent position (partially-open drying position) and close position (washing position), in addition to an open position (loading position). The latch has an electric actuator mounted in the top portion of the door, Figs. 3-4. The dishwasher comprises a washing chamber having a door movable between an open position and a closed position. The latch includes an electric motor 32, that moves the

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door between the washing position and the drying position, having a bracket 83. The latch releasably retracts and engages behind the a lock in the door in a washing position. The engagement of the lock effectively acts as a force limiter limiting a force of closure of the door between the close position and the seal position. The door is releasably held in the drying position by a detent (spring) of the lock. The electric actuator is mounted on the washing chamber. A control system controls the washing/drying operation cycles of the washing machine by operating the door motor (Column 3, Lines 54-58). (Note: closing the door for washing reads on moving the door from an open to a closed position or an open to a sealed, etc.).

7. Buser et al. does not teach a sensor sensing the door in the close position to allow the timer controller to control the electric actuator to move the door from the close position to the seal position; however, Ellingson et al. teaches a washing machine in which a microcontroller is programmed to allow an electric solenoid to actuate the door latch lever to lock the door in a seal position once it has been sensed in closed position (Column 7, lines 27-44) and claim 1 of Ellingson et al. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Buser et al. with Ellingson et al. to create a dishwashing machine which is has an automatically locking door.

8. In regards to claim 8, Buser et al., as modified by Ellingson, does not teach the electric actuator is mounted on the door and releasably engaging the washing chamber; however, it has been held that reversal of parts would have been obvious (*In re Gazda* 104 USPQ 400). It would have been obvious to one of ordinary skill in the art at the

time of the invention to modify Buser et al., as modified by Ellingson, to create a dishwashing machine in which the electric actuator is mounted on the door and releasably engages the washing chamber.

9. In regards to claims 4, 13, 21, and 23, Buser et al., as modified by Ellingson, does not a manual latch to open the door; however, it has been held that an obvious choice in design is not patentable (*In re Kuhle* 188 USPQ 7). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Buser et al., as modified by Ellingson, to create a dishwashing machine in the user has the ability to manually control the opening of the door such as to add dishes or halt washing.

**10.** Claims 5, 14, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buser et al. (US Patent No. 5881746) in view of Ellingson et al. (US Patent No. 4510777) and further in view of Burnett (US Patent No. 6295004).

11. Buser et al. does not a manual latch to open the door; however, it has been held that an obvious choice in design is not patentable (*In re Kuhle* 188 USPQ 7). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Buser et al. to create a dishwashing machine in the user has the ability to manually control the opening of the door such as to add dishes or halt washing.

12. Buser et al., as modified by Ellingson, does not teach a switch which signals that the latching portions have released the door of the dishwasher nor a door closed sensor; however, Burnett teaches a dishwasher 10 which has a front door 12 which has a switch signaling (LED emitting device) which indicates that the door 12 is beginning to open (Column 4, Lines 30). The LED 22 emitting device helps prevent injury to the shin

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or lower leg by the user walking into the open dishwasher (Column 2, Lines 0-43). If the door 12 is closed then there is no LED 22 signal; therefore, the dishwasher has a means to sense and indicate the door is closed. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Buser et al., as modified by Ellingson, with Burnett to create a dishwashing machine which can signal that the latch portions and latch and tub portions have been released and the door is in an open state and could cause injury to the shins and lower leg of the user.

***Allowable Subject Matter***

13. Claims 10, 18, and 26-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. The following is a statement of reasons for the indication of allowable subject matter: Burnett does not teach or suggest a force sensor which actuates opening of the door.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON P. RIGGLEMAN whose telephone number is (571)272-5935. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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